primary function is switching but which may have a small component that could be considered transmission equipment, such as a remote switching module. Further, because technologies are evolving, the Commission should not permit one type of switching equipment, such as packet-switching equipment, to be collocated while restricting another type, such as circuit-switching equipment, from being collocated. Incumbent LECs should not be required to collocate either type of switch. Permitting one type and excluding another will only give further incentive to those who seek to circumvent the standards by utilizing such equipment differently than envisioned by the Commission today.

CBT agrees with the Commission's conclusion in paragraph 132 that it should not require the collocation of enhanced services equipment. The proliferation of enhanced service providers alone provides enough evidence that the Commission's conclusion is sound. Space in incumbent LEC offices would be quickly exhausted by enhanced services equipment. That is, space available for collocation of equipment for telecommunications services (such as advanced telecommunications capabilities), equipment to access UNEs, or incumbent LEC equipment additions, would be scarce because of this competition with enhanced services equipment. Providers of enhanced services should house their equipment on their own premises as it is very easy for them to transport traffic to any location of their choice where they can independently provide whatever amount of space they need.

In response to paragraph 133, CBT does not believe the Commission needs to issue any additional rules to deal with ILECs that do not allow cross-connects between collocating carriers. CBT has allowed this practice and has not encountered any

problems. The appropriate remedy for CLECs who have not been allowed to do so would be to bring a complaint to enforce the existing rules. ILECs who have complied with the rules should not face additional rules because of the few ILECs who have not.

CBT agrees with the Commission's tentative conclusion that an incumbent LEC may require all equipment a new entrant places on its premises to meet safety standards, such as the Bellcore Network Equipment and Building Specifications (NEBS) requirements (paragraph 134). CBT also agrees with the Commission's conclusion that, insofar as incumbent LECs use equipment that does not meet such standards, competitive LECs should be permitted to collocate the same equipment. However, the tentative conclusion that incumbent LECs should be required to list all approved equipment and all equipment they use is unnecessarily burdensome on a mid-sized independent LEC such as CBT. CBT, like any other new entrant LEC, has no control over what equipment meets NEBS standards. Unless, the incumbent LEC utilizes equipment that does not meet NEBS requirements, providing a list of all the equipment they use would be redundant and unnecessary. At best, from a practical perspective, the incumbent LECs and the new entrant LEC should provide each other with a list of equipment they use which is non-compliant with NEBS.

While the Commission's effort to minimize the collocation space needed by each competing provider in order to promote the deployment of advanced services is a worthy cause (paragraph 137), CBT believes such effort is misdirected. It has been CBT's experience that carrier's have not shown any inclination to minimize collocation space. In fact, most collocators either insist on space beyond their short-term needs or they want to ensure that sufficient adjacent space is available for future expansions and request the

right of first refusal for such space. The cost of floor space is not high enough for a minimum of 100 square feet of floor space to be a deterrent to collocation. HVAC, equipment power, cross-connect and security requirements for both the collocator's equipment and the incumbent LEC's equipment are much more substantial and do not significantly vary with the reduction of floor space.

Cageless collocation presents a security dilemma. The security of the incumbent LEC as well as all of the collocating carriers is at risk. The Commission inquires whether escorts for competitive technicians, concealed security cameras and computerized badge tracking systems are sufficient protection (paragraph 141). From the perspective of identifying the party guilty of a security breach, such as sabotage, security cameras and computerized tracking system may perform flawlessly, but are not preventive measures. In any event, these devices would be costly, would have to be maintained, and personnel would have to be devoted to monitoring those systems. These costs would likely offset the savings from eliminating cages. Escorts would serve as a deterrent, but new entrant LECs have resisted paying for an ILEC technician to perform such services, and this also takes the ILEC technician away from his normal duties. This also leads to higher costs for the incumbent LEC as such normal duties may then have to be performed on an overtime basis.

Collocation, the advent of local competition, the proliferation of new entrant LECs and the development of advanced telecommunications services are all relatively new, and the problems and all the security concerns have yet to be identified. As a practical matter, it seems prudent to err on the side of conservatism until sufficient experience is gained. The security of the new entrant LECs is at risk and the new entrant

LECs should be as concerned about their risk and security as incumbent LECs are concerned about their risk and security. The security of collocation cages is the most practical solution to the security concerns of all parties.

Space preparation and construction times are, indeed, variable and dependent on location (paragraph 142). It has been CBT's experience that building permits, which must include the appropriate construction drawings and require approval of government entities, must be obtained before any construction can be started. Addition of equipment that overextends the limits of HVAC equipment can put an entire building full of equipment, and several thousand customers, at risk of service failure. Supplementation of HVAC equipment takes time. Running a power cable to a piece of equipment is a fairly simple task, although one that requires some time for supply and installation. However, installation of an additional equipment rack in a location that requires construction of a new power plant requires several months lead time. A national standard established by the Commission, which does not account for such timing differences would create as many additional problems as it would resolve.

It would be unreasonable for the incumbent LEC to be required to fund market entry for new entrant LECs as well as requiring the ILEC to recover the cost of space preparation only as competing providers occupy portions of that space (paragraph 143). CBT's experience is that the new entrants' forecasts of space requirements are unreliable and continually change. CBT has experienced several carriers that have shown interest in collocation, proceed up to the point just prior to the start of construction, change their minds and then weeks or months later revive their interest and want construction completed in time frames that are much shorter than previously agreed. CBT's policy is

that the first carrier to collocate bears the cost of space preparation. That carrier is then reimbursed pro rata as additional collocators utilize the space that was prepared. This policy is fair and equitable to the new entrant LECs as well as to CBT.

The Commission seeks comment on how to address delays between the ordering and the provisioning of collocation space (paragraph 144). It has been CBT's experience that an interconnection agreement can be negotiated before a CLEC has received state certification, but will not be final until it is signed by both parties and has state commission review and approval and the CLEC is certified by the state. If the new entrant LEC does not have the foresight to pursue state certification while conducting interconnection negotiations as a parallel process, then collocation could be delayed. The new entrant LEC, not the incumbent LEC, must take responsibility for such delays. CBT's experience, at least in Ohio, is that certification of a new entrant LEC is not a given, as the Public Utility Commission of Ohio has suspended and denied several applications. Therefore, until the CLEC has signed an interconnection agreement and received certification from the state commission, the ILEC has no assurance that a collocation arrangement will ever come to fruition and should not be required to expend resources building out collocation space for a carrier that may never be entitled to occupy that space. Additionally, if the CLEC has not paid for the full cost of space preparation in advance, the ILEC is forced to incur expenses that it may never be able to recover.

At this point, CBT has not experienced problems with space exhaustion (paragraph 145). However, in Ohio, the PUCO's local competition guidelines require the state commission to arbitrate situations where the ILEC denies physical collocation due to lack of space. A CLEC tour of the premises (paragraph 146), in addition to the

commission review, serves no useful purpose. The administrative burden on the ILEC to prepare and update a report indicating available space, the number of collocators, and the modifications in the space since the last report for each requested premises (paragraph 147) is unnecessary. CBT believes that the state commission, in its role as arbitrator, is closer to the situation and is the appropriate body to resolve all disputes and to determine what additional actions are necessary, if any. There is nothing in the record to indicate that the states are not able to resolve collocation disputes, and therefore, no new requirements for tours or new reports exist.

In paragraph 149, the Commission suggests that CLECs be allowed to use virtual collocation to the same extent that an advanced services affiliate does so. While CBT does not disagree with this conclusion, it again highlights the lack of necessity for a separate affiliate to provide advanced services. If virtual collocation of advanced services equipment is available to CLECs, they can have installed the same equipment that the ILEC uses for provisioning advanced services, without the need to install physical collocation facilities. If virtual collocation is available to all CLECs, there is no reason why an ILEC should have to form a separate affiliate and then provide virtual collocation to the separate affiliate when the ILEC could have provisioned the same equipment directly.

IV. NATIONAL STANDARDS ARE NOT REQUIRED FOR LOCAL LOOPS

In its Overview for Section VI(c)(2), the Commission expresses concern that its existing rules applicable to the unbundling of loops do not adequately provide the availability of "last mile" facilities to competitive providers. In paragraphs 154-156, the Commission asks if national standards should be established for local loops which would

serve to speed the deployment of advanced services. CBT cautions against the establishment of any uniform standards for local loops in the short term until the market dynamics of an industry propelling itself toward a "data-centric" environment can be defined. Even then, a regulatory standard may not be appropriate in an industry marked by such rapid change.

In a nonregulated industry, the marketplace typically drives standardization efforts for networks, technologies, products and services. National and international standards generally define the parameters in which components of technology, services, protocols, etc. will co-mingle. In a market driven industry, however, all companies, not only ILECs, make business decisions that incorporate some standards while not incorporating others. This is logical and appropriate inasmuch as no two companies are alike in terms of their markets, product portfolios and business strategies. For example, no single telecommunications company conforms with every ruling and recommendation established in the Ordering and Billing Forum. OBF standards were developed for the industry but must be individually applied.

Certain standards do promote efficiency. For example, the equipment standards integral to FCC Part 68 rules provide for an effective industry medium with which to build equipment interfaces. On the other hand, retroactive standards applied to embedded telephone company networks could have consequences that actually hinder competition. For example, a standard calling for a customer loop with no loads would have various negative consequences for a telephone company that has load coils in some of its loops. Costs of removal of load coils on a case-by-case basis must be charged to the cost causer. A requirement to remove all loads in a network prior to demand-generated activity

would: (1) interfere with the ability of other network components to operate, and (2) greatly increase costs which would have to be attributed to the loop cost, thereby, impeding competition.

Another example is a current Ohio state requirement that all loops must be capable of transmitting a 9600-baud signal. The ability to transmit a 9600-baud signal is as much an issue with the quality of the CPE used to generate and receive the signal as it is of the network to transmit it. CBT has encountered numerous instances of customers who connected inferior customer premises equipment to CBT's network and then complained that it would not work. CBT personnel, in response, would dispatch and place other CPE of higher quality on the network and transmit with no problem whatsoever.

CBT contends that, before the Commission should even consider the possibility of establishing any kind of loop standard, that a relationship between the current national loop makeup and real barriers to entry must be proven. CBT can cite no instance in its operating area where the makeup of its loops has been a barrier to competitive entry. CBT, in its existing interconnection agreements, has made provisions to provide various types of loops in response to CLEC demand. Specific requirements may differ from CLEC to CLEC, therefore, CBT suggests the Commission leave this to the negotiation process between the parties, a process which is currently working well.

CBT understands the critical nature of access to loops in order to provide all telecommunications services. CBT has made a good faith effort in its interconnection negotiations to provide CLECs with access to unbundled loops which suit the specific needs of CBT's interconnectors. Further, CBT has already taken steps to provide

conditioned loops for the deployment of advanced services by CLECs. This includes the removal of load coils and other loop conditioning which would serve to lower dB loss and improve the quality of the loop. CBT has also devised a procedure that provides an alternate path if the requested loop is provisioned on integrated DLC. The requesting carrier, as previously determined by the Commission, must bear the cost of loop conditioning.[4]

V. NO CHANGES ARE NEEDED FOR ACCESS TO OPERATIONS SUPPORT SYSTEMS

The Commission seeks comment whether existing operations support system rules adequately ensure that competitive LECs have access to necessary information required to provision xDSL loops. In paragraph 157, the Commission asserts that the competitive LECs need information such as whether the loops pass through remote terminals and what kind of conditioning is on the loop. The conclusion drawn is that competitors must have the ability to make their own assessments that the loop will support the technology. CBT disagrees with this conclusion. CLECs have established interconnection agreements with CBT that include loops which support advanced telecommunications services. Specifically, CBT provides an HDSL compatible loop. When this loop is provisioned for the CLEC, it is engineered to support the HDSL service, and the technology which supports it. Similarly, if a CLEC negotiated with CBT for ADSL compatible loops, these would be provisioned in a similar manner. For each loop type made available, a set of service metrics (continuity, loss, and technology

[4] First Report and Order, paragraph 382.

compatibility) is established. Therefore, access to OSS functionality is not a requirement to assure that a loop will be provisioned to match the CLEC client's needs.

The Commission seeks comment in paragraph 158 as to the type of loop inventory information available to ILECs. While it would be nice to have real time access to loop makeup information, historically ILECs have never had a need to maintain this information in readily accessible formats. In most cases, determination of loop makeup requires a review of paper engineering records or a field inspection of the particular facility. ILECs do not have electronic access to this information about their own networks and it would be impossible to provide CLECs with electronic access. CBT has agreed to provision HDSL-compatible loops on the same terms and within the same intervals as it does for its own retail customers. This satisfies the statutory requirement that it not discriminate against competitors and that it provide parity of service. For the Commission to impose additional requirements beyond that would require huge investments in time, money and new systems to track this information.

VI. LOOP SPECTRUM MANAGEMENT

In paragraphs 159-162, the Commission seeks comment on the issue of loop spectrum management. The Commission's concerns seem to be directed at two different issues: 1) spectrum interference; and 2) access to and sharing of spectrum on an xDSL loop. Regarding spectrum interference, CBT shares the Commission's concern that technology deployed on a specific pair of wires within a binder group can, and most likely will, generate noise (e.g. crosstalk) in other pairs in that same binder group. Two conditions will exacerbate this problem. First, CBT, and other telephone companies do not have ready cross-reference mechanisms which relate services to loops to binder

groups. Therefore, isolation of interference problems may be difficult. Further, and more importantly, CLECs are not currently required to disclose information regarding exactly how they are utilizing loops nor the technologies applied. When CBT provides an xDSL compatible loop, it will take safeguards when provisioning and inventorying the loop to guard against interference. However, there are no regulations that prohibit a CLEC from using a generic 2-wire or 4-wire loop to provide an xDSL service and not informing the incumbent LEC provider.

There is no reliable way to predict in advance that a given use of a loop will generate crosstalk. It is expected that this condition would come to the attention of the parties through customer complaints. The legitimacy of these complaints can then be verified by testing. CBT has taken steps to protect itself from this type of interference, but can do so only in a reactive mode due to the constraints outlined above. CBT negotiates into its interconnection contracts, language that allows CBT to disconnect a loop if it is determined that the loop is causing interference or other network harm. This is one of the few tools that can be employed at this time to minimize network problems. CBT would support regulations that would require confidential disclosure by CLECs to the ILEC of information regarding services and technologies deployed on each order for an unbundled loop.

In paragraph 161, the Commission seeks comments on whether it should grandfather existing technology in the event it adopts new national standards on spectrum management. CBT supports the concept that the new user takes the network as it finds it and must tolerate any interference generated by existing usage. Conversely, if the new user creates interference with existing users that did not exist theretofore, the new user

must defer to the existing usage and conform its usage of the network so as not to cause interference. Once it is determined what is causing the interference, the most recently added service would be the one that must be removed or altered to eliminate the interference.

With regard to access and spectrum sharing of an ADSL compatible loop, in paragraph 162 the Commission seeks comment on whether two different service providers should be allowed to have access to offer services over the same loop utilizing different frequencies. CBT believes only one service provider should provide service over a single loop. The potential management problems with two carriers using the same loop are significant. In any event, there is no evidence that a substantial number of customers would want two separate carriers to provide service over the same loop. It is likely that a customer who would obtain advanced services from a carrier would also obtain basic voice grade service from the same carrier. Thus, the problem of dividing the spectrum may be more of a theoretical issue than one that would frequently arise. If two carriers were going to share a single loop, one or the other would have to be responsible for installing and maintaining the electronics on both ends of the loop that allow spectrum division. Most likely, the carrier providing the advanced services would be responsible for this. However, assuming the CLEC is the party that installs the electronics, it would need the loop to be delivered to its collocation area, where it would attach the DSLAM to the loop, and would redeliver the voice signal from the loop to the ILEC. The ILEC would lose control over the loop and any problems with the voice grade service could be caused by the CLEC or arise in the collocation area where only the CLEC had access.

This could prevent the ILEC from providing appropriate maintenance and repair work for the customer.

There are also economic reasons not to require sharing of a single loop. For example, CBT regards xDSL service as a value-added feature on a POTS or Centrex line. The existing regulations correctly do not allow for the uncoupling of a feature from the line to be resold apart from the line. The intent here was to preclude the arbitrage that would result from competitors seeking to resell only high value features and not the baseline product, the access line. Considering the matter with regard to unbundled loops, CBT views the lessor of the loop as the entity having sole access to, and use of the loop, and its entire spectrum, for the provision of services. Commission regulations currently prohibit CLECs from leasing unbundled loops solely for purposes of providing interstate access services. The party leasing the loop must also provide local exchange service to that customer. Similar to access services, CBT views the sale of an unbundled loop to a CLEC as a network service which can only be further resold to an end user customer. If the CLEC wishes to place electronics on the loop to provide spectrum for multiple services that it, alone, may provide to its end-user customer, then CBT views this as appropriate. However, CBT sees little business sense or economic benefit to an end user customer for multiple providers to provide multiple services over a single loop.

This issue also highlights problems created by the proposed separate affiliate rules. For an ILEC to have a separate affiliate provide advanced services would require either that the ILEC engage in spectrum splitting with its affiliate or that the separate affiliate purchase the unbundled loop from the ILEC and also provide the other necessary UNEs to provision local exchange service. As a practical matter, the affiliate could not

obtain voice service through resale because the ILEC would then have complete control over the facilities and the affiliate could not obtain physical access to the loop to provision the advanced services. Thus, the most logical way for an ILEC to provide advanced services is for it to do so directly and to place the advanced services equipment on the local loop. Competitors would have the same opportunity to do so by buying the unbundled loop and adding the advanced services facilities themselves.

VII. NO NATIONAL CENTRAL OFFICE STANDARDS ARE NEEDED

In paragraph 163, the Commission states that "each incumbent LEC sets its own requirements for the central office equipment, and each has its own processes for certifying equipment before it can be connected to loop plant." CBT supports this standard and has adopted practices and procedures which fit with CBT's overall business plans and strategies. The Commission then states that this process increases new entrants' costs and time to market and, apparently, assumes that the reader will take this statement as an axiom. The Commission then states that a "simple set of national requirements would reduce new entrants' costs, speed their time to market, and reduce confusion." CBT disagrees.

The Commission seeks comment on what the set of national standards should contain. CBT takes strong exception to the positions that the Commission takes in these statements and, indeed, challenges their validity. CBT believes the existing negotiation process appropriately balances the interests of new entrants and ILECs alike. CBT currently has interconnection/resale agreements with 12 providers and others continue to be negotiated. CBT cannot cite a single instance where a policy or procedure that it has implemented regarding its central office equipment requirements and certification has

impeded in any way, successful negotiation and service rollout to CBT's CLEC customers. Further, there is no record in any arbitration proceeding nor in any complaint to any commission regarding CBT's practices as a hindrance to competitive entry. Before moving forward on any discussion regarding national central office equipment standards, CBT does not believe that a complete record will reflect that statements, presented as fact in the NPRM, are indeed valid and with merit. CBT's current practices do not in any way impede or do harm to any CLEC intention to deploy services in CBT's operating area. Further, CBT contends that the artificial application of an arbitrary set of rules defining central office equipment requirements and guidelines not only would drive up CBT's costs, but would hinder its ability to make sound network decisions that best fit the plan and strategy of CBT as an independent business. In addition, many states have minimum service standards which vary from state-to-state. Establishing national standards may conflict with many states existing standards and for certain will drive up costs to all customers.

In paragraphs 169-172, the Commission seeks comment on the technical issues that arise when local loops pass through digital loop carriers. Presently, xDSL technologies require a complete copper path from the DSLAM to the customer premises. Where a given loop is partially provisioned using DLC technology, xDSL cannot be provisioned on that loop. The simplest alternative to this problem is to reroute the feeder portion of that loop onto a copper feeder facility where available. This, however, presents a serious problem with respect to establishing the cost of unbundled loops. While the Eighth Circuit's decision in Iowa Utilities Board v. FCC determined that the Commission did not have jurisdiction to establish the pricing methodology for UNEs, in

fact, most states have adopted the TELRIC methodology advocated by the Commission. This theory requires the ILEC to develop loop costs based upon the most efficient forward-looking technology. With certain loop lengths, DLC would be the most efficient forward-looking technology and it is frequently the method by which loops are actually provisioned. Under the TELRIC methodology, the cost of copper feeder facilities, even if actually present in the network, is not to be considered in developing a loop price. However, where advanced services such as xDSL are to be provisioned, it may turn out that the copper feeder is necessary in order to provision the service. ILECs must be allowed to recover the cost of the copper feeder if they will be expected to use it to accommodate requests for conditioned loops. However, there is a direct tension between TELRIC pricing rules and the requirement to provide conditioned loops. The Commission should provide the states with guidance on how to resolve this dilemma.

The Commission seeks comment in paragraph 172 on whether a specified standard interval should be established for the provision of xDSL compatible loops and asks what that interval should be. CBT believes that it is appropriate and within the spirit of the act to provide the same interval to a competitor that it would provide for itself for a similar loop. However, CBT disagrees that it would be proper for the Commission to establish a specific interval for the provision of such a loop. Telecommunications companies' networks are vastly different from each other in terms of their loop composition. Due to geographic and demographic differences, some telecommunications companies may have a much greater percentage of their loops that must be conditioned than others. Establishing an arbitrary interval will certainly advantage some LECs while disadvantaging others. Even within the same network, some loops will be easy to

condition and others may require special construction that could take a significant amount of time to complete. Each case presents a unique situation. CBT believes that parity and non-discrimination is the key. The rules currently in place and contract negotiation procedures are adequate to address this issue without the need for further intervention by the Commission.

VIII. SUB-LOOP UNBUNDLING

In paragraphs 173 and 174, the Commission discusses the issue of the necessity of sub-loop unbundling, its technical feasibility and alternatives. CBT would state that the issue of technical feasibility for subloop unbundling must be determined on a case-by-case basis. There are certain remote terminals that are not constrained by physical limitations and could, with additional construction expense, be modified to support subloop unbundling. Other remote terminals, however, are so constrained in how they are constructed that physical space limitations prohibit subloop unbundling. In cases where subloop unbundling is possible, it should be the responsibility of the party seeking access to subloop elements to bear the cost of any necessary network modifications and the responsibility of assuring that network reliability is not jeopardized by any changes made.

The Commission also seeks comment whether, when subloop unbundling is not technically feasible or there is insufficient space, the ILEC should provide alternative methods to subloop unbundling "at no greater cost to the competitive LEC." CBT believes that the spirit and intent of the Act require that costs be borne by the cost causer. In this case, the specific cost causer would be the CLEC or CLECs that desired access to an equivalent subloop functionality at a specific point in the network. The costs

necessary to modify the network to meet the CLEC requirements should be borne by the CLEC, not by the incumbent telecommunications provider or its customers. Such an arrangement would render CLECs unaccountable for the direct costs and risks associated with their network activities.

In paragraph 175, the Commission addresses the issue of access to remote terminal locations. CBT supports the Commission's position that "first come, first served" is the most appropriate means of allocating scarce remote terminal space. Further, if an expansion of space is technically feasible, CBT would not be opposed to expanding the space so long as the costs were borne by the parties seeking access and rules and guidelines, such as those existing under existing collocation arrangements, were adopted and applied in order to assure physical and network security (paragraph 176) at the site. There are network reliability concerns associated with providing multiple party access to feeder distribution interfaces because such equipment has historically been designed with a fixed number of openings. Accommodating access by a CLEC may require field modification of the structures and should only be done in a manner that would assure the same network reliability. For example, adding an opening to an existing cabinet may create weatherproofing problems and could void manufacturers' warranties on equipment. This type of work would have to be done in accordance with appropriate quality standards to prevent degradation or interruption of service to existing customers.

IX. UNBUNDLING AND RESALE OBLIGATIONS UNDER §§ 251(c)(3) and 251(c)(4)

In its discussion of Unbundling Obligations in paragraphs 180 through 184, the Commission seeks comment on the type and nature of network unbundling which should

be required in order that the deployment of new services is not impaired. CBT believes existing unbundling rules are sufficient to address this issue. In response to paragraph 181, CBT believes that the Commission should consider the additional criteria of whether a given network element was used for the provision of telephone exchange service at the time of enactment of the 1996 Act. With respect to new network elements that will be used to deploy advanced services, ILECs and CLECs stand on the same footing and are equally able to install equipment necessary to provision advanced services such as xDSL. Having access to unbundled loops, including loops conditioned to receive xDSL equipment, CLECs are in the position to develop their own new services and deploy them without having to rely further upon ILECs. Similarly, the ILECs should be free to deploy their own advanced services without the threat that anything they do should be made available to CLECs at cost or on a wholesale basis.

The marketplace must be allowed to work. CLECs compete against one another without obligations to share facilities or equipment. With respect to new services that were not traditionally provided, ILECs should also be allowed to compete on an even footing with CLECs. Constant and new regulation is neither necessary nor warranted. Today, competitors already have access to loops capable of providing advanced telecommunications services in the same manner as ILECs provide to themselves. CBT has already negotiated loop types that support HDSL and, when applicable to the negotiation process, will be willing to negotiate an ADSL compatible loop type as well. In terms of other network elements, there is simply no need to unbundle them. Competitors have the ability today to collocate in CBT's central offices, install DSLAMs, and transport the traffic to their own networks. In this regard, CBT has no increased

ability or advantage inasmuch as ADSL is an emerging technology available to all on a nondiscriminatory basis.

In paragraph 184, the Commission seeks comment on specific regulatory relief that it should provide to ILECs to encourage them to provide advanced services. CBT urges the Commission to reconsider its decisions on the various applications for forbearance under § 706 of the Act, as the relief sought therein would provide significant encouragement to ILECs to deploy advanced services. There is a clear opportunity for the Commission to distinguish between network elements and services that were provided before the Act and those that are added in the future. For such new elements and services, there is no reason to handicap the ILECs. To encourage true competition, the ILECs and CLECs should be free to compete for new services on an equal basis. The obligations to unbundle new equipment that CLECs could obtain for themselves, or to resell new services that CLECs could provision for themselves, create economic disincentives for ILECs to invest in new equipment and services. This deters innovation and slows the deployment of advanced services to the public, contrary to Congress' stated goals in § 706. CBT would strongly recommend that the Commission consider such an approach as a meaningful deregulatory step towards creating real (not artificially induced) competition.

In paragraph 189, the Commission tentatively concluded that advanced telecommunications services, because they were offered primarily to end-user retail customers, "fall within the core category of retail services that both Congress and the Commission deemed subject to the resale obligation . . . ." CBT does not dispute that advanced telecommunications services will be offered to retail customers. However,

CBT would note that § 706 of the Act requires the Commission to "encourage the deployment on a reasonable and timely basis advanced telecommunications capability to all Americans." The Commission is to use various measures, including regulatory forbearance, to encourage the development of advanced telecommunications capability. As discussed elsewhere in these comments, if the Commission requires resale of advanced telecommunications services, its actions would serve to discourage the deployment of these services.

CBT also reminds the Commission that it has decided to exempt enhanced service providers from paying access charges to LECs for the use of the local network. In order to encourage development of the Internet, the Commission has relieved them from the burden of paying access charges, a decision that has substantial adverse economic impact on local telephone companies who must provide additional facilities to handle this traffic without being compensated for it. At the same time, many states have determined that traffic destined to Internet providers is "local" traffic for purposes of paying compensation under interconnection agreements. Many CLECs are taking advantage of this by encouraging Internet providers to relocate on CLEC networks, providing a lucrative source of income to CLECs at the expense of ILECs. If the Commission now requires ILECs to resell advanced services, whose most significant usage would be to access the Internet, ILECs will once again bear the brunt of the cost of making Internet access widely available. At some point, some other industry group has to pay its fair share. Suspension of resale of advanced services would be an appropriate starting point.

Rules for unbundling and resale should not be applied to advanced telecommunications services. Rather, the forces of a competitive market must be allowed

to work. If the rules on unbundling and resale are applied to advanced services, it will drastically decrease the incentive for ILEC's to invest in network improvements necessary to provide these emerging, state of the art services. ILECs' competitors would be able to take advantage of the ILEC's initiative and innovation without the risk associated with introducing a new technology, and at prices that would prohibit the ILEC from fully recovering its investment. CBT does not contest the fact that unbundling and resale of preexisting UNEs and telecommunications services would still be required. However, as noted above, with the UNEs that are now available from ILECs (e.g., local loops, collocation space and dedicated transport), competitors are free to purchase these existing UNEs and install the additional equipment necessary for advanced services and assume the necessary market risk themselves. With the availability of these UNEs, ILECs do not control any essential facilities necessary to provide services, such as xDSL, and should not be burdened with the additional unbundling and resale obligations for xDSL infrastructure and service that otherwise would be imposed on its existing telephone business.

CBT recommends that the Commission use its forbearance authority, as encouraged by § 706, to limit application of the unbundling and resale rules to traditional circuit switched networks. Competitors invest in new technologies and facilities in order to differentiate themselves. Regulations that artificially impair the ability of a competitor to earn an economic return on such investments artificially cause the competitors not to invest in those facilities. Economics driven by the marketplace is a better innovator than any regulation attempting to stimulate artificial competition. Forcing one company to share the benefits of its innovation with others, who do not share the same risks as the

innovator, causes that company not to take the same risks that it may otherwise have assumed. It does not make economic sense to build a brand new data network and assume all of the associated costs of doing so if the company would be required to make that network available to its competitors at only its forward looking costs. For a new investment to be rational, the firm should expect to be able to recover its investment plus an opportunity to earn a reasonable return on its investment.

To require ILECs to resell new services at a discount would further erode the incentives to launch a new service. If discounted resale were required, competitors could offer exactly the same services at lower rates, with none of the risk that the service would turn out to be unprofitable. Allowing resale provides no incentive to invest in new advanced data technologies. A reseller makes no investment in infrastructure and can walk away from selling a service at any time. However, the party that builds the network does not have the luxury of walking away from it without suffering a significant financial loss. All competitors should have the same incentives (and risks) to innovate without artificial regulatory incentives that allow gaming of the market.

CBT believes the public interest would be better served by Commission forbearance than by enforcement of § 251 (c) and (d) with respect to advanced services. For example, if competitive providers were not able to leverage ILEC investments in advanced data networks, CLECs would invest their own resources in such facilities, thereby making a far wider range and variety of facilities and services available for public use at competitive prices which only an unregulated and independent marketplace can produce. CBT also believes this would result in an increase in the broadband capacity which is being demanded by its customers, a more competitive market resulting in

increased customer choice and lower prices, as well as greater productivity and increased economic development for its customers.

CBT is not alone in its belief that an unregulated and independent marketplace is the most efficient means to promote the deployment of new, advanced services. Commission Chairman William E. Kennard, in his speech to the Personal Communication Industry Association of America on September 23, 1998, stated that the "relationship between industry and government must be firmly grounded in common sense". He further explained:

> I want to bring more common sense to the ways that we work together – industry and government. From my perspective, this means that we in government must have the humility to trust in the marketplace. And I believe that industry should respect this limited role for government. Industry must recognize that government's role is not to confer regulatory advantage, or guarantee anyone success, but rather, to strive only to afford everyone an opportunity – an opportunity to win or lose in the marketplace.

CONCLUSION

The 1996 Act has established the groundwork for a competitive marketplace and made it possible for new entrants to operate alongside long established local exchange carriers. Given this foundation, the Commission needs to let the marketplace work for new advanced telecommunications capabilities. The separate affiliate requirement is unnecessary over-regulation, a barrier to deployment, and an inefficient use of valuable resources. Existing interconnection, unbundling, collocation, and resale requirements, as established by the Commission, are working and will be sufficient to allow all new entrants to competitively offer advanced telecommunications services. New regulations are unnecessary for the deployment of advanced services to be successful.

Respectfully submitted,

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